



In the Matter of:

PAUL JAYKO,

ARB CASE NO. 01-009

COMPLAINANT,

ALJ CASE NO. 99-CAA-5

v.

DATE: OCT 31 2000

**OHIO ENVIRONMENTAL
PROTECTION AGENCY,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER TO SHOW CAUSE

The respondent Ohio Environmental Protection Agency (OEPA) has filed a motion requesting that the Administrative Review Board stay this appeal pending resolution of an action before the United States District Court for the Southern District of Ohio, Eastern Division.¹ In the district court action, OEPA alleges that the proceedings in this case before the Board under the whistleblower provisions of seven environmental acts² "are barred by sovereign immunity." OEPA's Memorandum in Support at 2. OEPA has requested that the district court, pursuant to Fed. R. Civ. P. 57, issue a declaratory judgment "that the adjudication and/or prosecution of this case violate Ohio's right of Sovereign Immunity and its rights under the Tenth and Eleventh Amendments and that any actions, orders, rulings, and/or findings are void and without force and effect." Complaint in *Ohio Environmental Protection Agency v. United States of America*, Case No. C2 00-1157 at 10. OEPA has also requested a temporary restraining order and preliminary and permanent injunctions pursuant to Fed. R. Civ. P. 65, "ordering [the Department of Labor] to cease and desist any prosecution, adjudication, enforcement, or any other action brought against the State of Ohio" under the seven environmental acts at issue in this case. *Id.*

¹*Ohio Environmental Protection Agency v. United States of America*, Case No. CA 00-1157.

²This case arises under - the Toxic Substances Control Act, 15 U.S.C. §2622 (1994); the Federal Water Pollution Prevention and Control Act, 33 U.S.C. §1367 (1994); the Safe Drinking Water Act, 42 U. S. C. §300j-9(I) (1994); the Solid Waste Disposal Act, 42 U. S. C. §6971 (1994); the Clean Air Act, 42 U.S. C. §7622(a) (1994); the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9610 (1994) and the Energy Reorganization Act, 42 U.S.C. §5851 (1995).

Complainant Jayko is ordered to **SHOW CAUSE** within 10 days of this order why the Board should not grant OEPA's motion to stay these proceedings.

FOR THE ADMINISTRATIVE REVIEW BOARD:

Janet Dunlop
General Counsel

NOTE: Questions regarding any case pending before the Board should be directed to the Board's staff assistant, Ernestine Battle.

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